

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JAMES A. SWAPSHIRE,)	
)	
Plaintiff,)	
)	
vs.)	Case number 4:10cv2105 TCM
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This 42 U.S.C. § 405(g) action for judicial review of the denial of James A. Swapshire's application for disability insurance benefits under Title II of the Social Security Act (the Act), 42 U.S.C. § 401-433, is before the Court¹ on the unopposed motion of Michael J. Astrue, the Commissioner of Social Security (the Commissioner), to remand the case pursuant to sentence six of § 405(g).

"In cases reviewing final agency decisions on Social Security benefits, the exclusive methods by which district courts may remand to the [Commissioner] are set forth in sentence four and sentence six of § 405(g)" **Shalala v. Schaefer**, 509 U.S. 292, 297 (1993).

"Sentence-six remands may be ordered in only two situations: where the [Commissioner] requests a remand before answering the complaint, or where new, material evidence is

¹The case is before the undersigned United States Magistrate Judge by written consent of the parties. See 28 U.S.C. § 636(c).

adduced that was for good cause not presented before the agency." **Id.** at 297 n.2. "Under sentence six,² 'the district court does not affirm, modify, or reverse the [Commissioner's] decision; it does not rule in any way as to the correctness of the administrative determination.'" **Travis v. Astrue**, 477 F.3d 1037, 1039-40 (8th Cir. 2007) (quoting **Melkonyan v. Sullivan**, 501 U.S. 89, 98 (1991)) (footnote added).

In the instant case, the Commissioner moved for a remand before filing his answer, explaining that the administrative decision at issue improperly applied the principle of res judicata and the case should be remanded for a substantive decision. The Commissioner's motion is properly considered pursuant to sentence six and shall be granted.

Accordingly,

²Sentence six of 42 U.S.C. § 405(g) provides:

The court may, on motion of the [Commissioner] made for good cause shown before he files his answer, remand the case to the [Commissioner] for further action by the [Commissioner], and it may at any time order additional evidence to be taken before the [Commissioner], but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the [Commissioner] shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based.

IT IS HEREBY ORDERED that the motion of the Commissioner to remand pursuant to sentence six of 42 U.S.C. § 405(g) is **GRANTED**. [Doc. 13]

An appropriate Order shall accompany this Memorandum and Order.

/s/ Thomas C. Mummert, III
THOMAS C. MUMMERT, III
UNITED STATES MAGISTRATE JUDGE

Dated this 11th day of February, 2011.